

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 105 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PACKART PRIVATE LIMITED

Versus

COMMISSIONER OF INCOME-TAX

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Appearance:

MR D.A. MEHTA, MR R.K. PATEL, MR B.D. KARIA for  
MR KC PATEL for Petitioner  
MR BHARAT J. SHELAT, instructed by  
MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 31/01/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following questions:-

ASSESSMENT YEAR 1976-77:

1. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of claim of gratuity liability of Rs. 65,149/- made by the assessee u/s 28 and or Section 37 of the Act?"
2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not entitled to development rebate amounting to Rs. 9,290/- on the enhanced value of the assets arising out of exchange loss of Rs. 61,460/- even though depreciation is admissible on the same?"

ASSESSMENT YEAR 1977-78:

1. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of claim of gratuity liability of Rs. 95,021/- made by the assessee u/s 28 and or Sec.37 of the Act?"

The learned Counsel for the assessee points out to us that the question No.1 for the assessment year 1976-77 and the question for the assessment year 78-79 referred to us are squarely covered by the decision of the Supreme Court in Shree Sajjan Mills Vs. CIT, reported in 156 ITR 585. Applying the said decision, we hold that the Tribunal was justified in law in confirming the disallowance of claim of gratuity liability made by the assessee under Section 28/37 of the I.T Act in respect of these two assessment years. Both these questions referred to us are therefore, answered in the affirmative against the assessee.

As regards the question No.2, it is pointed out to us by the Counsel for the assessee that the same is concluded against the assessee by a decision of the Supreme Court in CIT Vs. Arvind Mills, reported in 193 ITR 255. Applying the said decision, we hold that the Tribunal was right in holding that the assessee was not entitled to development rebate amounting to Rs. 9,290/-

on the enhanced value of the assets arising out of the exchange loss of Rs. 61,460/eventhough the depreciation was admissible on the same. The said question is therefore, answered in the affirmative against the assessee. The reference stands disposed of accordingly with no order as to costs.

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